



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Walter Cosby,  
Deputy Fire Chief, City of East  
Orange

CSC Docket No. 2018-1156

Classification Appeal

**ISSUED:** May 2, 2018 (RE)

The City of East Orange (East Orange) appeals the decision of the Division of Agency Services (Agency Services) which found that Walter Cosby’s position is properly classified as Deputy Fire Chief. It seeks a Fire Captain job classification in this proceeding.

Walter Cosby was permanently appointed as a Fire Captain with the City of East Orange on September 26, 2014. He requested a desk audit of his position, alleging that he was performing the duties of a Deputy Fire Chief. A classification review was conducted by Agency Services in response to Cosby’s submission of a Position Classification Questionnaire (PCQ). The review involved an analysis of the PCQ, and related documents. In its September 7, 2017 determination, Agency Services found that Cosby’ position would be properly classified as Deputy Fire Chief, effective May 27, 2017.

On appeal, the appointing authority states that Cosby was assigned to the position of Administrative Assistant to the Fire Chief, and this was approved by the Public Safety Director. He reports directly to the Fire Chief and assists with administrative goals and objectives, and assists with maintaining confidential files and records. East Orange states Cosby does not manage or control discipline, and does not supervise two Fire Captains, but that those Fire Captains report directly to the Fire Chief as referenced in its rules and regulations. It states that Cosby: maintains leave and attendance rosters for a firehouse; coordinates with vendors for repairs and forwards information to the Fire Chief; recommends vendors and Personal Protective Equipment (PPE), tools and other equipment; collects data and

prepares monthly reports on apparatus, facilities maintenance, supplies, tools and equipment; repairs tools and equipment and ensures timely completion of scheduled grounds care; schedules and secures supplies for bi-annual cleaning; maintains records of hydrant and standpipe inspections; is a member of the committee for review of specifications of new apparatus; coordinates recruitment and orientation of new employees; and serves as liaison with the Department of Public Works for building maintenance. East Orange states that it has an agreement with FMBA Local 223 that it will manage its own Fire Department, properties, and facilities, and allows it to assign Fire Captains any duties except those of police duties or quelling or suppression of riots. East Orange maintains that rules and regulations allow the Public Safety Director and the Fire Chief authority regarding the assignment of personnel, citing *N.J.S.A. 40A:14-7* (Creation and Establishment of Fire Departments and Forces). East Orange maintains that it reviewed Cosby's duties and determined that they could be performed by a Fire Captain. It indicates that no supervisory responsibilities are involved, and that Fire Captains have duties of file and record keeping and can report directly to the Fire Chief. It argues that it would be severely hampered if it could not assign members to positions that would help the objectives of the organization. Lastly, it argues that Springfield, Irvington, and Bloomfield utilize the functional title of Administrative Assistant for a Fire Captain and two Fire Fighters who assist their Fire Chiefs. East Orange states that Cosby's duties were initially offered to the Deputy Fire Chiefs, who all declined.

In response, Cosby, represented by Paul Kleinbaum, Esq., argues that a complete eligible list for Deputy Fire Chief (PM1696S)<sup>1</sup> has not yet expired, and East Orange is circumventing the use of this list. He argues that, prior to his appointment, East Orange always filled the Administrative Assistant to the Fire Chief position with a Deputy Fire Chief, never a Fire Captain. He states that his position is a proxy in the absence of the Fire Chief, and is required to supervise all ranks below that of Deputy Fire Chief in his absence. He submits the Duties of the Administrative Assistant to Chief of Department (Article 4). These duties indicate that the position reports to the Fire Chief, and cannot be on vacation at the same time as the Fire Chief but assumes all responsibilities and functions of the Chief in his absence. The rules state that the position shall respond to multiple alarm fires and other emergencies as necessary, and in the absence of the Chief, may exercise command at all times at fires and has authority over all department members according to the Incident Company System. Additionally, he submits an organizational chart dated March 28, 2017 which indicates that a Mechanic, the

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<sup>1</sup> The eligible list for Deputy Fire Chief (PM1696S) was promulgated on July 13, 2015 with nine eligibles, and expires July 22, 2018. One appointment was made from certification (PL150999) on September 4, 2015 and a recent second certification (PL171208) has the note "Budget Freeze, New Mayor" and has not yet been recorded. Cosby was not eligible to file for this examination, which had a December 22, 2014 closing date.

training Fire Captain and the special services Fire Captain are this position's subordinates.

The appellant claims that the appointing authority's reliance on the collective negotiations agreement is giving the Fire Chief the right to make appointments is irrelevant, as such an agreement cannot separate mandatory provisions of Civil Service law. He argues that his duties are consistent with the job specification for Deputy Fire Chief, and inconsistent with the job specification for Fire Captain. The appellant maintains that the training Fire Captain and the special services Fire Captain were orally advised by the Fire Chief that they would report to Cosby, and he submits an email which he addressed to one Fire Captain regarding his denial of permission for the Fire Captain to participate in classes or school on company time. He also explains that two Deputy Fire Chiefs indicated to him that they were not offered the position and did not decline it. Lastly, the appellant states that reliance on the organization of other municipalities has no relevance, and although East Orange has not provided the assignments and organizational structures of these departments, it is incorrect regarding Irvington, where a Deputy Fire Chief serves as the Administrative Assistant to the Fire Chief. He states that a Deputy Fire Chief serves as the Administrative Assistant to the Fire Chief in Orange, West Orange, Newark, Elizabeth, Rahway, Linden, Plainfield and Jersey City. While he states that he should remain in a provisional appointment, he requests that East Orange be ordered to use the existing promotional list and return certification (PL171208).

### CONCLUSION

*N.J.S.A.* 11A:3-1 and *N.J.A.C.* 4A:3-3.1(a) provide that each position in the career and unclassified services shall be assigned by the Civil Service Commission (Commission) to a job title.

First, it must be emphasized that the appointing authority has the right to determine the organizational structure of its operation. The New Jersey Administrative Code does not mandate that local jurisdictions spend funds to make promotional appointments, and the Commission does not have any authority over fiscal decisions of local jurisdictions. If there are no improper reporting relationships or misclassifications, how the office is organized or how often the office is reorganized is not under the jurisdiction of the Commission or reviewable in the context of a classification appeal. However, the Commission's determination is controlling regarding proper position classification. *See e.g., In the Matter of Lawrence Craig and Louis Muzyka, Borough of Carteret* (CSC, decided February 11, 2009). *See also N.J.S.A.* 11A:3-1(d). While the Fire Chief may be responsible for the assignment of duties of all subordinate personnel and is empowered with the authority for the efficient operation of the Fire Department, this authority does not include the responsibility of position classification. In jurisdictions operating under

Title 11A (Civil Service Act), this responsibility is under the exclusive province of the Commission. Similarly, the function of position classification is statutorily delegated to the Commission and is not subject to the collective bargaining process. Finally, the organizational structure of other jurisdictions has no bearing on position classification in East Orange. The classification of a position is determined based on the duties and responsibilities assigned to a position at the time the request for reclassification is received by Agency Services as verified by audit or other formal study.

Turning to the merits of this matter, the definition section of the job specification for Deputy Fire Chief states:

Under direction of the Fire Chief, assists in the management and discipline of the fire department designed to provide fire protection for persons and property; does other related duties as required.

The definition section of the job specification for Fire Captain states:

Under direction, has charge of a fire department company intended to assist in the extinguishing of fires; does other related duties.

At this point, it is noted that East Orange does not utilize the Battalion Fire Chief title, which typically supervises the Fire Captain and reports to the Deputy Fire Chief. Instead, East Orange has Deputy Fire Chiefs supervising Fire Captains and reporting to the Fire Chief. Currently, there are five Deputy Fire Chiefs, one for each tour and a fifth "Roving" Deputy Fire Chief.

Additionally, the definition portion of a job specification is a brief statement of the kind and level of work being performed in a title series and is relied on to distinguish one class from another. A comparison of these job definitions indicates that the Fire Captain is a line supervisory function, acting in a supervisory capacity at the fire scene. In contrast, the Deputy Fire Chief usually performs administrative/management level functions, and is required to assist in managing and disciplining all subordinate personnel in the fire department. A review of Cosby's duties reveals that he predominantly performs management-level duties. Clearly, the appellant is not a line supervisor in charge of a company extinguishing fires and his administrative duties exceed the duties required of a Fire Captain.

When the appellant completed his PCQ, he indicated that he supervised two Fire Captains and other personnel, including the preparation of performance evaluations. The Fire Chief agreed with the statement of duties he prepared, and the organizational chart indicated that the two Fire Captains and a Mechanic reported to the appellant, not the Fire Chief. Neither the Fire Chief, nor the appointing authority, indicated on the PCQ that they disagreed with the appellant's

supervision. On appeal, East Orange merely states that the appellant does not supervise the Fire Captain, but provides no proof, such as performance assessments for the Fire Captains completed by the Fire Chief. Therefore, the record indicates that the position is correctly classified as Deputy Fire Chief and Cosby's provisional appointment to Deputy Fire Chief on May 27, 2017 is correct. However, since the promotional list (PM1696S) is complete, the appointing authority should return the certification (PL171208) to make a regular appointment.

### ORDER

Therefore, the appeal is denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 2nd DAY OF MAY, 2018



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